

### **REMARKS**

Claims 1-20 are pending in the application. The Applicants wish to thank Examiner Barr and Examiner Krynski for granting the telephone interviews with the Applicants' representative, attorney Richard L. Kaiser, on April 16, 2003. The substance of those interviews will be discussed below.

#### **Defective Reissue Oath/Declaration**

The Examiner has stated that the supplemental oath/declaration filed with the previous Response remains defective for failing to identify at least one error which is relied upon to support the reissue application. Examiner Krynski has indicated that a plain English recitation of the claim language of one of the added claims, accompanied by a statement that the Applicants were entitled to a claim of this scope, would overcome this rejection.

The Applicants submit that the attached Supplemental Declaration overcomes the Examiner's rejection under 35 U.S.C. 251. The Supplemental Declaration also includes the Examiner's recommended language for a supplemental oath/declaration regarding the lack of deceptive intent on the part of the Applicants.

#### **Rejection of Claims 17-20**

The Examiner has rejected claims 17-20 under 35 U.S.C. 251 as being based upon new matter added to the patent for which reissue is sought. Claims 17-20 have also been rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not

described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. Based on these rejections, the Examiner also states that the Preliminary Amendment introducing new claims 17-20 is improper.

Specifically, the Examiner has stated that “the Applicant has not shown or established that in the context of gas sensors that the ceramic member has to be a solid electrolyte. While it can be shown that some ceramics are solid electrolytes in gas sensors, it is not shown that any ceramic used in the gas sensor must be a solid electrolyte or even conductive. There is no indication in the specification or the prior art that this must be the case.” It is therefore the Examiner’s position that “one skilled in the art reviewing the present specification would have used a dielectric ceramic material to practice the present invention [rather] than a conductive one, as there is no direction provided to indicate the nature of the ceramic.” Finally, the Examiner states “if the applicant can provide a factual showing indicating that the ceramic member of the gas sensor described and claimed by the applicant must be a solid electrolyte, then the examiner would withdraw the new matter rejection.”

The Applicants have supplied the requested factual showing in the form of the attached Declaration of Mr. John Day under 37 CFR 1.132. Mr. Day is one skilled in the art of exhaust gas sensor design. The Declaration provides objective factual evidence indicating that the ceramic member of the gas sensor described and claimed by the Applicants must be a solid electrolyte.

In light of the evidence set forth in the Declaration, the Applicants respectfully request careful reconsideration of the rejections of claims 17-20, including the objection

to the Preliminary Amendment for lacking support for the claim changes, as required by 37 CFR 1.173(c).

**Written Consent of Assignee**

The Examiner has objected to the application under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. Specifically, the Examiner states that "there is no explicit statement of consent in the application.

The Examiner's attention is directed to the attached annotated copy of the Consent of Assignee certificate filed on April 10, 2002. The explicit statement of consent is highlighted for the Examiner's convenience. Therefore, the Applicants respectfully submit that the previously filed Written Consent of Assignee certificate is in compliance with 37 CFR 1.172 and 3.73.

In view of the foregoing, reconsideration and allowance of claims 1-20 are respectfully requested.

The undersigned is available for telephone consultation at any time.

Respectfully submitted,



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